Puppel, Debra

From: Alisa Brewer <avbrewer@gmail.com>
Sent: Friday, September 11, 2015 12:15 AM
To: Select Board
Subject: Select Board meeting 08-31-15 followup: alleged consent decree regarding scheduling of elections when students away: background material needed before 09-18-15 packet for 09-21-15 meeting
Attachments: Walgren vs Howe Missouri Law Review 1975.pdf

Hi John-

You'll recall that one of the issues mentioned during the 08-31-15 Select Board meeting re: Annual Town Election date scheduling was the old "consent decree" that is mentioned whenever it appears that dates for:

1) voter registration, or

2) submission of nomination papers, or

3) voting

might occur when college students are not abundant in town. Below are some pieces of information that I hope will help Town Counsel sort this quickly.

We need something in writing from Town Counsel in the Select Board packet absolutely no later than the usual publish date of 09-18-15 for the 09-21-15 meeting. The opinion should be clear on expectations for scheduling regular annual elections and special elections, as well as the voter registration and nomination paper issues, not just the act of voting, and also state once and for all whether there is a "consent decree" or any other legally binding agreement.

Of note:

- Putting "consent decree" in the search box on our Town website yields one item, a DLS form that has nothing to do with this situation.

- in 1973, we were using a different fiscal year -- January 1 instead of July 1

- and a different election system, with a caucus/primary if more than two nomination papers filed for a seat (similar to nearby cities today)

- and a separate date for incumbents to file

- UMass students lived on campus until age 21 or senior or married

Newspaper article from the special Town election held the same day as the Presidential election in 2008:

http://www.masslive.com/news/index.ssf/2008/07/amhersts_decision_to_delay_spe.html
Amherst's decision to delay special election sparks criticism

By The Republican Newsroom
on July 29, 2008 at 7:50 PM, updated July 29, 2008 at 7:52 PM
By DIANE LEDERMAN
dlederman@repub.com

AMHERST - The Select Board's decision to change the date of the special town election has upset many people because it means a seat on the board will remain vacant for an additional six weeks.

The board in a 3 to 2 vote last night rescinded a previous vote setting the Sept. 16 special town election because of concerns that students would be unable to participate. Ultimately all five members agreed to the new Nov. 4 date, the same day as the presidential election.

The election was scheduled to replace board member Anne S. Awad who announced her resignation earlier this summer, effective Aug. 31.

Aaron P. Hayden, who along with David T. Keenan, took out papers for the seat, said the decision to reschedule the election was a poor one.

"The Select Board has chosen to run shorthanded at an important time in their schedule (preparing for fall Town Meeting.)" He also did not think the change was necessary.

The pair will have to take out new papers, which should be available by Monday, Town Clerk Sandra J. Burgess said.

Keenan said the vote "treats them (students) as a privileged class of citizens." They don't vote, he said. The action is indicative of "why the Select Board is upside down," he said.

Taking out papers again is "an extreme inconvenience."

Residents wrote to board members asking them not to delay the election and others spoke against it at the Monday meeting.

Select Board members changed the date because they were concerned about a possible lawsuit.

In 1973, Eric L. Walgren, who has since died, sued selectmen after they scheduled a town election while college students were away. The legality of the election was upheld in August 1975 by the U.S. Court of Appeals, but selectmen then agreed they would schedule future town elections when the University of Massachusetts, Amherst College and Hampshire College are in session. While the Sept. 16 election would be held when students are back, they wouldn't be back in time to either register to vote or take out papers.

Select Board Chairman Gerald S. Weiss said he was concerned about whether the town would be operating in bad faith by holding the election in September. "I don't like acting in bad faith," he said Monday night.

Amherst Town Counsel Joel B. Bard determined the board could hold the election as scheduled. Board member Stephanie J. O'Keeffe pointed out that few students actually voted anyway.

Burgess had asked the board not to set the new election on the day of the presidential vote.

Burgess said today that her office "has been presented with a very difficult challenge. The state is predicting record voter turnout for the November election." She said the town manager indicated that he will provide her office with the "necessary resources needed to prepare and conduct two elections simultaneously."

The national and local elections will require separate ballots as well as separate check-in and checkout tables. Burgess was not sure of the cost of the added election.

SELECT BOARD MINUTES, 08-25-08

http://amherstma.gov/ArchiveCenter/ViewFile/Item/1589

Special Election Update

Mr. Weiss said that information about the 1975 Appeals Court decision on the *Walgren v. Amherst Board of Selectmen* case had been found following the Select Board's July 28th discussion and vote to reschedule the special election from September to November. Mr. Weiss said the decision is more strongly-worded and supports the recollection of former Selectman Merle Howes regarding the promise made in the judge's chambers to not schedule elections when students can't participate – a key point of the Select Board's recent discussion. *[At the 9/8/08 meeting, Ms. Stein reported that Mr. Howes had informed her on 8/18/08 that the promise made to the judge had not occurred in the judge's chambers.]*

Mr. Weiss said he sent the decision to Town Counsel, and read an excerpt from

Town Counsel's reply, which said in part:

"Based on the above, it is my opinion that the Board is properly guided by the Town 'policy' represented to the Court in the 1970s proceedings. When we had earlier advised you in this matter (stating that the Board could exercise greater flexibility in scheduling a special election to fill a seat for less than a year), we were unaware of this history, let alone that the federal courts had documented a Town policy on the issue."

Mr. Weiss said that this indicates that the Select Board majority had voted correctly to reschedule the election. Ms. Brewer said that the decision cites a policy to not hold elections when students are unable to cast ballots, and noted that the original September 16th date would have been in keeping with that. She said that she is concerned that Town Counsel's original opinion would have been made without researching the appeal decision. Ms. O'Keeffe said that the new Town Counsel opinion did not say that keeping the September date would have been wrong, but only that it was not inappropriate to have gone the more cautious route of changing the date. She said that filling a short-term vacancy with a special election was different from the lawsuit's situation of holding the Annual Town Election, and that hewing to student availability for such extenuating circumstances would allow elections to be held only a few weeks out of every year. Mr. Weiss said he didn't think that having a vacancy on the Select Board for six extra weeks would be viewed by the courts to be sufficient justification for going against the policy of accommodating students. Ms. Stein said the matter had been discussed enough and that she was satisfied that the Select Board had done its best to honor the policy. Ms. Brewer requested that this policy be located so that it can guide future Select Boards, and noted that a special election several years ago did not adhere to this policy. Mr. Shaffer said there is no specific

repository of Select Board policies, nor is there long-term historical knowledge among the office staff, but said that a compilation of details from this situation would be created and distributed for future reference.

No action taken.

Town Annual Report, 1976 -- nothing found under election or walgren

Town Annual Report, 1975 -- nothing found under election or walgren

Town Annual Report, 1973-1974: http://amherstma.gov/DocumentCenter/Home/View/6190

January 1973 might have begun a period of relative calm in the Town Clerk's office in contrast to the hectic 1972 election year. The pace became lively and somewhat strained, however, when many hours were spent in preparing a lengthy analysis of student voting behavior which became a major stipulation in the Eric Walgren vs. Amherst Selectmen Election Date trial in Boston's Federal District Court in mid January. The charge by Walgren, an unsuccessful candidate for the office of selectman in the 1973 Town Caucus, that irreparable harm was done to the voting rights of students who were out of Amherst during intercession which included the January 19th caucus date, was finally considered to be unfounded by the presiding judge.

1975 ruling:

http://ma.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19750808_0040051.C01.htm/qx

Walgren v. Board of Selectmen of Town of Amherst

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

August 8, 1975

ERIC WALGREN, ET AL., PLAINTIFFS, APPELLANTS,
v.
BOARD OF SELECTMEN OF THE TOWN OF AMHERST, DEFENDANTS, APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS. 373 F. Supp. 624. HON. W. ARTHUR GARRITY, JR., U.S. District Judge.

Coffin, Chief Judge, McEntee and Campbell, Circuit Judges.

Author: Coffin

COFFIN, Chief Judge.

This class suit, on behalf of both the entire college community and particularly college students in the 18 to 20 year age group, was brought against the selectmen of the college town of Amherst, Massachusetts, to invalidate the town election of 1973.[*fn1] The principal question is whether the selectmen, in holding the town caucus during winter recess when many of the student voters were absent, violated the Twenty-sixth Amendment or the equal protection clause of the Fourteenth Amendment. Initially, the district court granted summary judgment to defendants and dismissed the complaint for failure to state a cause of action. On appeal we vacated this order and remanded the case for trial on the merits. Walgren v. Howes, 482 F.2d 95 (1st Cir. 1973). Subsequently, the court held an extensive trial and issued its opinion, finding for defendants. Walgren v. Board of Selectmen, 373 F. Supp. 624 (D. Mass. 1974). This appeal followed.

The controversy arises from events which took place over a ten-day period in December, 1972, during which the town selectmen, at plaintiff Walgren's urging, endeavored to change the scheduled date for the town caucus, the primary election in which nominees for the positions of town officer and town meeting member are selected. On December 10, 1972, Walgren protested the then recently-published schedule for the 1973 elections on the ground that the caucus date of January 19 would be during the winter recess of the University of Massachusetts, when some 10,000 dormitory students would be out of town.[*fn2] On December 11 the board voted to reconsider the schedule of its December 18 meeting. After a week of public reaction, both pro and con, a long and animated meeting was held on December 18, at the end of which the board voted to establish a new calendar. But the dates for the caucus and the final election proposed by Walgren, January 29 and March 1, raised the possibility of a conflict with a state requirement that 31 days separate the two dates. The board, being of the opinion that statutory notice for the proposed new dates would have to be published by the following day, provisionally adopted them, subject to advice of counsel. When, on December 19, the advice was received that the dates would be illegal, the board, at a special meeting in the evening, turned down its counsel's proposal that the town meeting itself be moved ahead by a week, and reinstated the original calendar.[*fn3]

In addition to the chronology of events above recited, and a description of the demography of the town, referred to in n. 2, supra, the court in its findings noted that the University and the two colleges were not completely closed to students during the January recess period, there being some special studies programs and dormitory occupancy being permitted on request; that perhaps 1,000 University dormitory residents who were registered voters in the 18-20 year old age group were away from school on the January 19, 1973 caucus date; that 90 percent of the 1,587 registered student voters living in dormitories had homes in Massachusetts; and that "before, during and after the election in question, the defendant selectmen acted in good faith toward Mr. Walgren individually and student voters generally." 373 F. Supp. at 628. Moreover, the court noted that in 1974, the year following that in issue here, the selectmen chose a date agreeable to Walgren and the student government groups of the three schools. The selectmen are now on record, in a statement adopted while the trial was in progress, as endorsing a policy "to hold municipal elections on dates that afford all registered voters an opportunity to personally participate therein by casting ballots at the polls." 373 F. Supp. at 628.[*fn4]

The court first addressed plaintiff's equal protection argument, made on behalf of a class consisting of students, faculty, and staffs of the three colleges. It followed the analysis in Rosario v. Rockefeller, 410 U.S. 752, 36 L. Ed. 2d 1, 93 S. Ct. 1245 (1973), inquiring whether the burden was so severe as to be "unconstitutionally onerous" and if the date selected was arbitrary or tied to a legitimate purpose. With reference to the burden on student voting, the court noted that students had the options of staying on campus, returning to campus (many students' homes being within an hour's drive), or of casting an absentee ballot. It concluded that many students could have voted in person without much expense or inconvenience and that the use of absentee ballots posed no greater difficulties to students than to other voters, such as businessmen, servicemen and shut-ins. It also held that the date finally set was connected with a valid goal, citing the desirability of having a town meeting as soon in the fiscal year (then the calendar year) as the completion of the prior year's record made possible; the fact that a number of town meeting members, relying on the customary second Monday of March, had told various defendants that they had planned to be away thereafter; and the reluctance of the selectmen to add to voter and candidate confusion by adopting a set of dates differing from the original ones, those proposed by Walgren, and those proposed by the town's legal counsel.

On appeal plaintiffs do not press their equal protection claim, preferring to "treat the student franchise controversy as a 26th Amendment case." It is, however, not clear that they waive this claim. In any event, we agree with the district court's conclusion. The burden on faculty, staff and students in this case would seem to be less than that of the eight to eleven month early enrollment requirements upheld in Rosario. It is true that the connection between the caucus date and legitimate town goals is more tenuous and less particularized than that in Rosario. As plaintiffs point out in their brief, fiscal uncertainty would not have been greatly affected by another week's delay before town meeting. The departure plans of several out of many town meeting members, three months in advance, would not seem to pose a serious problem.[*fn5] And whatever confusion might have been generated by an additional set of dates could conceivably be removed over the course of future weeks and months.

Whatever doubts we might have on this score are resolved, not only by the lower standard of relationship between requirement and interest applied in Rosario, but also by the fact that defendants could reasonably think a decision as to the election schedule was compelled within a very short time. Their good faith judgment as to the sufficiency of town interests served and the adequacy of alternative dates cannot fairly be reviewed without taking into account the atmosphere of confusion and pressures of time in which they acted.

We proceed, then, to plaintiff's Twenty-sixth Amendment claim. In our prior opinion we acknowledged that even in cases arising under the Fifteenth Amendment analysis had not always been explicit, and that no clear test had yet emerged to determine when the Twenty-sixth Amendment is violated by governmental action bearing disproportionately on those enfranchised by that amendment. In the absence of evidence, briefs, and argument we left resolution of the issue in the first instance to the district court. We did, however, opine that

"it seems only sensible that if a condition, not insignificant, disproportionately affects the voting rights of citizens specially protected by a constitutional amendment, the burden must shift to the governmental unit to show how the statutory scheme effectuates, in the least drastic way, some compelling governmental objective." 482 F.2d at 102 [footnote omitted].

The district court expressed its opinion that, absent the imposition of such a "gross burden" as would effectively deny access to the franchise, the Twenty-sixth Amendment does not add to the protection afforded by the Fourteenth Amendment. It relied both on what it termed the more fundamental value perception and deeper historical background leading to the Fifteenth Amendment and on what we might call the underinclusiveness of a Twenty-sixth Amendment approach to problems created by imposing burdens on the exercise of franchise by all students, a substantial number of whom are over 21 years of age. The court nonetheless proceeded to apply our formula. It first found the burdens already discussed in its equal protection analysis "insignificant in a constitutional sense," 373 F. Supp. at 634. It then addressed the issue of disproportionality. As contrasted with the 1,000 registered student voters in the 18 to 20 age group, who had been found to be burdened, the court had no evidence from which to conclude how many registered voters in the same age group were not inconvenienced by the caucus date, nor any basis for estimating the percentage of the burdened among Amherst voters 21 years of age and over. It concluded that any effort to arrive at a comparison of ratios would be speculative. So finding, it did not explore the means by which the compelling interest of the town might be served in a less drastic way.

While we now have the benefit of the evidence, oral and written argument, and the district court's opinion, we are still without the assistance of any precedents guiding us in evaluating the impact of the Twenty-sixth Amendment. It is difficult to believe that it contributes no added protection to that already offered by the Fourteenth Amendment,[*fn6] particularly if a significant burden were found to have been intentionally imposed solely or with marked disproportion on the exercise of the franchise by the benefactors of that amendment. But we need not now face this issue, for, under the circumstances of this case, we join the district court in its conclusion that even under a rigorous standard of review the Amherst town election of 1973 should be upheld.

In so holding, we pursue a somewhat different course than did the district court. We do not reject its conclusion as to the speculativeness of determining whether 18-20 year old voters were disproportionately burdened, assuming the existence of a significant burden. That is a decision we think the court was entitled to make on this record. While this could end our analysis, we are disinclined in a case raising important issues to rest our decision on the technical point of burden of proof. As for the court's holding that the burdens themselves -- of returning during recess to vote in person or of going through the application and notarial execution process of absentee voting -- are insignificant, we are uncomfortable. We would not wish the end result of this lengthy litigation to be construed as authority for setting critical election dates during college recesses in communities having a very large if not majority proportion of students who are also eligible voters in the 18-20 year age group, without a showing of some substantial justification. In short, we would be disturbed if, given time to explore alternatives and given alternatives which would satisfy all reasonable town objectives, a town continued to insist on elections during vacations or recess, secure in the conviction that returning to town and absentee voting would be considered insignificant burdens.

The critical element which in our view serves to sustain the 1973 election is the foreshortened time frame within which the selectmen were forced to face up to and resolve a problem which was then novel. As the district court observed, "They attempted to modify the election calendar for 1973 to facilitate student voting, but mainly because of the late date at which that modification was urged upon them, they were unable to surmount the problems." 373 F. Supp. at 636. While we noted in our earlier opinion that the "presence or absence of intent to discriminate against the protected class [does not] seem relevant in many circumstances," 482 F.2d at 101 n. 14, the finding that defendants acted in good faith in a crisis atmosphere is significant.[*fn7] We say here what we said in a different context in Steel Hill Development, Inc. v. Town of Sanbornton, 469 F.2d 956, 962 (5th Cir. 1972), "Were we to adjudicate this as a restriction for all time, . . . we might well come to a different conclusion."

We would add that, under the circumstances of this case, even if we had found the burden impermissible, we would have looked upon the novelty and complexity of the issue, the shortness of time, and the good faith efforts of the defendants as sufficient justification for refusing to order a new election at this late date. Allen v. State Board of Elections, 393 U.S. 544, 571-72, 22 L. Ed. 2d 1, 89 S. Ct. 817 (1969). See also Developments in the Law -- Elections, 88 Harv. L. Rev. 1111, 1334-1339 (1975).

The district court's analysis of plaintiffs' challenge to the notice of the election given by the town seems to us entirely proper, as was its discretionary dismissal of a pendent state cause of action.

Affirmed.

Disposition

Affirmed.

1974 ruling:

http://law.justia.com/cases/federal/district-courts/FSupp/373/624/2097821/

Walgren v. Board of Selectmen of Town of Amherst, Mass., 373 F. Supp. 624 (D. Mass. 1974)

U.S. District Court for the District of Massachusetts - 373 F. Supp. 624 (D. Mass. 1974)
March 22, 1974

373 F. Supp. 624 (1974)
Eric WALGREN et al., Plaintiffs,
v.
BOARD OF SELECTMEN OF the TOWN OF AMHERST, MASS., Defendants.

Civ. A. No. 73-109-G.

United States District Court, D. Massachusetts.

March 22, 1974.

***625** Eric Walgren, pro se, Thomas Lesser, Conway, Mass., for plaintiffs.

H. Theodore Cohen, Tyler & Reynolds, Donald W. Suchma, David M. Roseman, Boston, Mass., for defendants.

OPINION

GARRITY, District Judge.

This is a civil rights action pursuant to 42 U.S.C. § 1983 involving the fixing of the dates for a primary election in January 1973 in the Town of Amherst, and the notice of election provided town residents generally, but especially to students, by the defendants. The plaintiffs originally challenged the manner in which the election was held as violative of state law, but they have now abandoned that challenge. Plaintiff Walgren is a thirty-four year old resident of the Town of Amherst who sought a seat on the Board of Selectmen, but lost, in the contested primary election. Mr. Walgren, a colorful and self-described radical, anticipated wide student support in the election. The plaintiffs Sherman and Glusco are students at colleges within the Town of Amherst who are residents thereof. The defendants Howes, Bouchard, Eddy, Sullivan and Garvey comprise the Board of Selectmen of the town. The court initially dismissed the complaint for failure to state a claim, but on appeal the Court of Appeals reversed and remanded for trial. Walgren v. Howes, 1 Cir. 1973, 482 F.2d 95.

The plaintiffs, after several amendments, have alleged essentially two federal causes of action. First, it is claimed that the election calendar established by the defendants is unconstitutional under the Fourteenth and Twenty-sixth Amendments[1] to the Constitution of the United States because of the effects of those dates upon students as a class and upon plaintiff Walgren. Second, the plaintiffs assert that the notice provided by the town officials was unconstitutionally deficient under the Due Process Clause of the Fourteenth Amendment. A third, pendent state cause of action alleging that the notice violated § 2 of the Caucus Act, 1955 Mass. Acts of the Legislature, Chapter 149, as amended, we dismiss as a matter of discretion under United Mine Workers v. Gibbs, 1966, 383 U.S. 715, 86 S. Ct. 1130, 16 L. Ed. 2d 218, because a state court should pass initially upon the requirements of notice in a complex state election statute and because the disputed election has already been held.

Pursuant to Rule 23(b) (2), Fed.R. Civ.P., the court certified a plaintiff class composed of the students, faculty and staffs of the three colleges in the Town of Amherst. Because of plaintiffs' contentions based upon the Twenty-sixth Amendment, an effort is made in this opinion to define a subclass comprising student voters 18-20 years old. At the trial, no evidence was offered concerning the numbers or circumstances of faculty and staff.

While many witnesses were heard and exhibits received at the trial without jury, it developed that few material facts were contested and there was simply no evidence to establish alleged facts that were contested. The actual issue between the parties has been the characterization to be ascribed to the events and acts of the parties and the legal consequences, if any, flowing from that characterization.

Findings of Fact

1. The town of Amherst, located in western Massachusetts, has a non-student population of 15,000-16,000. Within its borders lie the University of Massachusetts, Amherst College and Hampshire College. Amherst utilizes a representative ***626** town meeting form of government, with a board of selectmen and a town manager. At the time of the instant controversy there were approximately 11,400 registered voters in the town, of whom 1587 resided in University of Massachusetts dormitories, 23 in fraternities or sororities, and 108 in University-owned apartments. Students not commuting from their homes are required to live on campus unless they are twenty-one years old, seniors, or married. Because of this the large majority of students residing in dormitories are 18-20 years old. An unknown number of university students who were registered to vote in Amherst lived off campus in apartments. There were 88 students registered to vote in Amherst living in Amherst College dormitories and 127 in Hampshire College dormitories. The voter potential at all these schools is substantially greater. The University has approximately 16,000 undergraduate and 6,000 graduate students in attendance, Amherst College 1270 students and Hampshire College 1000. However, the number of students actually registered represents a large block of roughly 3,000 voters within the town.

2. At its November 27, 1972 meeting, the board of selectmen voted a 1973 election schedule as follows:

December 8, 1972	deadline for publishing notice of filing date
December 15	deadline for incumbents to file
December 28	deadline to file for certification for town offices
January 2, 1973	caucus call, if necessary
January 15	deadline to file for certification for town meeting members
January 19	the caucus, if necessary
February 20	town election
March 12	annual town meeting

The same formula, with only a shift from the first to the second week in March for the town meeting, has been used since 1929. The election schedule has not undergone any changes which coincided with the grant of the vote to eighteen-year-olds, nor with any increase in the number of students in the town. The "caucus" is another term for a primary election. It is held only if more than two candidates file nomination papers for the same office in the town's nonpartisan general election. It cannot be known whether a caucus will be necessary until the deadline for filing nomination papers.

3. The controversy over the election calendar began with a telephone call by Mr. Walgren to Selectman Howes on the eve of the December 11, 1972 board of selectmen's meeting. Mr. Walgren

spoke with Mr. Howes concerning his strong feeling that the announced election calendar discriminated against students. Mr. Howes agreed to place the question on the agenda for the December 11th meeting despite the fact that the deadline for doing so had been the previous Friday. He also agreed to let Mr. Walgren address the board of selectmen on the question.

4. As a result of Mr. Walgren's plea for a new calendar, the selectmen voted on December 11 to reconsider the election calendar and to take further action on December 18, 1972, the next meeting of the board of selectmen. The December 11 meeting was not attended by townspeople other than the officials normally present and Mr. Walgren. It did, ***627** however, get substantial press coverage. At that meeting the selectmen voted to go on record as desiring to change the date of the elections to be held when the University was in session. As a result of this vote and the press coverage, the selectmen all received a number of phone calls relative to the changing of the election calendar. The callers were about evenly divided between supporters and opponents of the change.

5. Plaintiffs endeavored to establish at trial that the selectmen came under intense pressure, to which they acceded, not to "knuckle under" to Mr. Walgren and to keep students out of the town's political process. The only evidence of this was news stories suggesting such pressure. Those stories were directly contradicted by each selectman under oath. Additionally, Mr. Newman, a reporter for the Daily Hampshire Gazette, a county newspaper, confirmed that testimony. Mr. Newman regularly covers Amherst political stories, was present at the relevant meetings and spoke to each selectman concerning the calendar controversy. His testimony was to the effect that he was unaware of any basis for the knuckling-under stories or for a belief that the selectmen's actions were intended to discourage student participation.

6. The December 18 meeting was attended by approximately fifty townspeople. The atmosphere surrounding the question of the election calendar became one of "dynamic confusion", a term used by Selectman Garvey during his testimony. The meeting ran long into the night. A variety of opinions were expressed: Mr. Walgren's plea not to burden the students' vote, Mr. Garvey's opposition to affording any group specialized treatment, and an assertion by a woman in the audience that students had no business meddling in town affairs. The board then voted 3 to 1 to establish a new election calendar and rescind the calendar attacked by plaintiffs.

7. At this point, policy having been determined, the board turned to the practicalities of selecting a new calendar with specific dates. It soon became apparent that while the policy questions behind a change in the election calendar had been considered, no one had attempted to designate specific new dates within the formula required by state statute. Once a tentative election schedule had been proposed, the debate centered upon the number of days required by law to fall between the caucus and the general election and the problem of selecting dates which would not discriminate against any of the three schools within the town, since each had a different schedule. After considering many dates Mr. Bouchard concluded that as a practical matter an accommodation of the students was not

possible. Announcing his intention to reverse his vote, he moved to readopt the original calendar. After another plea by Mr. Walgren to facilitate student voting, that motion was rejected Mr. Bouchard voting against his own motion.

8. Eventually, as proposed by Mr. Walgren, it was voted that the dates for the caucus and the final election be postponed for ten days, to January 29 and March 1 respectively; the date for the town meeting remained unchanged. However, the selectmen were concerned that the 31 days required by statute might not exist between January 29 and March 1. With this in mind the board voted to adopt the proposed calendar conditionally upon its legality being approved by a leading local attorney, Mr. Dakin, by noon on the next day. This deadline reflected the opinion of the board that notice, by statute, would have to be published by December 19 if the new schedule were to be implemented. If in counsel's opinion the new calendar were illegal, an emergency meeting was scheduled for 6:00 P.M. on December 19.

9. The selectmen's fears were fulfilled. Mr. Dakin advised the board in writing that in his opinion the new calendar was not legal since there were not the requisite 31 days intervening between the date of the caucus and the date of the general election. Therefore ***628**the board met again at 6:00 P.M. on December 19. Mr. Dakin did not attend, but through the town manager, Mr. Torrey, suggested that the illegality could be cured by further postponing the election until March 5 and postponing the annual town meeting until March 19. This was the first proposal that the date of the town meeting be changed. The board voted unanimously to rescind its action of the day before and reinstate the original election calendar which had been voted on November 27.[2]

10. There were several reasons for reinstating the original calendar. One was to counteract voter confusion caused by an erroneous press release that the "Dakin" dates had been approved. Another was the defendants' belief that an immediate, final decision was required to meet a publication deadline in the Amherst Record newspaper. Also, the town's fiscal year had begun on January 1 and scheduling the town meeting as soon as possible after preparation and distribution of the town report showing receipts and expenditures for the previous year served to minimize the pressure on town meeting members to ratify expenditures already incurred for the current fiscal year. Furthermore, several prospective members had indicated to selectmen that, in reliance on the customary date of the town meeting, they had made plans which would conflict with a later date. There is no procedure for voting by proxy or absentee ballot at the town meeting.

11. At the December 28, 1972 meeting of the Board of Selectmen Mr. Walgren renewed his plea for a change in the election dates. Failing on this request, he assailed the notice to be given of the election calendar in three respects: (a) the town had not purchased advertising space in the newspapers but had relied upon a news release; (b) the dates provided were not complete; and (c) the term "caucus", because of its local meaning, should have been defined. Mr. Walgren's contentions were not acted upon.

12. Before, during and after the election in question, the defendant selectmen acted in good faith toward Mr. Walgren individually and student voters generally. They heard Mr. Walgren fully and repeatedly. They took positive steps to encourage student voting. During the fall of 1971 and in the spring and fall of 1972 the selectmen sent mobile voter registration units to various campuses for the purpose of registering students. As a result of four visits to the campus of the University of Massachusetts, 1,798 students were registered. The selectmen also provided a seat for a student on at least one major town committee. In December 1973, the selectmen established the 1974 election calendar so that the caucus is held on March 5, a date agreed to by Mr. Walgren and the student government groups at the University of Massachusetts, Amherst College and Hampshire College. While trial was in progress the selectmen unanimously adopted a declaration of policy "to hold municipal elections on dates that afford all registered voters an opportunity to personally participate therein by casting ballots at the polls."

13. Printed notices of the caucus were posted in seven places within the town. The format, "Greetings . . ." makes the notice more traditional than functional. No notices were posted on any of the college campuses. No announcement was printed by the selectmen in any of the college newspapers, although several appeared in other local newspapers, including the Daily Hampshire Gazette and the Amherst Record. The election did receive extensive newspaper coverage, partly because of Mr. Walgren's candidacy and the changes he requested. The student radio at the University urged students to vote.

14. The result of the balloting on January 19 was Howes 1353; Schuerer ***629** 413; Walgren 217; Costegan 66; and Patterson 53. Schuerer was a graduate student at the University of Massachusetts with a liberal reputation; at the selectmen's meeting on December 18 Schuerer as well as Walgren spoke in favor of changes to enhance the student franchise. Exhibits were received in evidence listing the name and home address of every undergraduate student residing in a University dormitory who was registered to vote in elections held during 1972 and 1973; and indicating which students voted, and whether in person or by absentee ballot, in the caucus and final election in 1973. The figures for the election at issue and the presidential election on November 7, 1972 and the town election on February 20, 1973 were as follows:

	Total Registered	*Voted in Person*	*Voted Absentee*
Presidential Election 11/7/72	1491	1284	43
Town caucus 1/19/73	1587	26	1
Town election 2/20/73	1587	142	4

Of the 1,587 students registered to vote in 1973, defense counsel counted the number giving home addresses in states other than Massachusetts and represented that it was 156, or slightly less than 10%.

15. The absentee ballot process, which was made applicable to primary elections in Massachusetts in 1971,[3] requires a written application for such a ballot. An absentee ballot is available to any voter who for any reason will be unable to vote in person at the polling place. Mass.G.L. c. 54, § 86. In response to a request for an absentee ballot, a package containing the ballot, instructions and a return envelope is mailed to the voter. He must fill in the ballot, have the package notarized (with the payment of the normal notary fee) and mail it back to the town clerk. To be counted, the ballots must be received before the polls close on election day. Persons who learn, when too late to use the mails for the absentee ballot process, that they will be unable to attend at the polls may vote in person at the town clerk's office, after completing an application, up until noon of the day before the election.

16. Defendants' eventual rejection of plaintiffs' proposal that the caucus date be shifted from January 19 to 29 was of no consequence to students absent from Hampshire College where standard classes did not resume until February 5. At Amherst College, standard classes begin again on January 29. Thus any student voters away on January 19 could have voted in person if the date had been changed to January 29. However, they would have had no greater opportunity to participate in any pre-election activities. The University of Massachusetts had registration for the second semester from January 22 to 24 and regular classes resumed on January 25, so that student voters absent on January 19 could have gone to the polls in person if the change had been made and could have participated in up to one week's pre-election activities, had there been any.

17. The campuses of the three colleges in Amherst were by no means deserted during January 1973 or on January 19, the date of the caucus. Unlike previous years when January was a vacation period, all three schools remained open for special, short courses for which credits were given and for independent ***630** study and for other purposes during January 1973. Amherst College and Hampshire College were conducting so-called January terms and at least half of their students stayed on campus during January. Regarding student voters at those schools, so far as indicated by the evidence all of them may have been in town on January 19, or none of them. At the University of Massachusetts some dormitories were kept open not only for students pursuing independent study but also, if permission was sought, for students from distant homes or who had local employment or other legitimate reasons for remaining on campus. For example, plaintiff Sherman remained on campus because of employment. Students who wished to return to campus to vote would have been allowed to stay overnight. Students living in fraternities, sororities, rooming houses and apartments off campus, totalling roughly 10,000, could of course remain without permission.[4]

18. The number of students remaining in the University dormitories during January may be inferred from testimony given by assistant dean of students West as to numbers remaining in certain parts of

the campus, which ran an average of about 5%. Thus of the 10,657 students in University dormitories, about 530 remained. It has previously been noted that there were 1,587 dormitory residents registered to vote in 1973, of whom 763 registered during a campus registration drive on September 12, 1972. Even if all 530 who remained were voters, about 1,050 voters were away during January. More realistically, in view of the low percentage of students registered to vote in Amherst, probably less than half the 530 students who remained were Amherst voters, say 250, making the total of those away 1,300. How many of the 1,300 were age 18, 19 or 20 involves considerable guesswork. Making allowance for dormitory residents who were 21 or over when they registered to vote, or reached 21 thereafter, and the large number of registrations in September 1972, we estimate the number of 18-20 year old voters away from school on January 19, 1973 at 1,000.

Conclusions of Law

The importance of the right to vote is not debatable. See Yick Wo v. Hopkins, 1886, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220. It is obviously of the essence in a democracy and an alleged infringement of that interest should evoke a careful consideration by a court. The vote, however, cannot be considered wholly abstractly superior to all other interests. Interests such as free speech and the rule of law also play crucial roles in our democracy. Nor should the invocation of an alleged infringement of voting rights blindly lead to the obliteration of all other interests which may impinge thereon, regardless of how speculative or incidental that infringement might be.

We note at the outset of our analysis that this case does not present an attack upon a statute, which would have a continuing and repetitive application. Nor does this suit challenge an administrative determination. Rather, at issue is a hybrid determination by the board of selectmen of Amherst. The nature of that body and the manner in which it arrived at its decisions can aptly be described as legislative; however, the nature of the question decided and its limited prospective effect only the election calendar for 1973 was set imbued that action with many of the characteristics of an administrative decision. These facts bear upon our evaluation of the validity of the selectmen's action in the context of at least some of the theories upon which the 1973 election dates are challenged. Cf. Williams v. Rhodes, 1968, 393 U.S. 23, 30, 89 S. Ct. 5, 21 L. Ed. 2d 24. This is not to say that they are dispositive, ***631** for if the selectmen's actions worked an unconstitutional end or effect, then the election dates chosen would nevertheless be impermissible. Cf. Dunn v. Blumstein, 1972, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274; Shapiro v. Thompson, 1969, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600.

The plaintiffs' first argument is that defendants' retention in December 1972 of the 1973 election calendar first adopted in November 1972 violated the Equal Protection Clause of the Fourteenth Amendment. Plaintiff Walgren claims that the defendants discriminated against college students intentionally and in bad faith. Plaintiff Sherman has disavowed any reliance on intent, and indeed

denies the validity of intent or motive as part of the constitutional determination.[5] Since we have found that the defendant selectmen acted in good faith and did not discriminate invidiously against students, the only determination to be made under the Equal Protection Clause is the effect of the 1973 election calendar: did it discriminate unconstitutionally against students?

The effects to be scrutinized are the burdens placed upon voting in the caucus election.[6] The Court of Appeals has indicated that, at least with respect to voting itself, strict scrutiny is inappropriate and the approach of Rosario v. Rockefeller, 1973, 410 U.S. 752, 93 S. Ct. 1245, 36 L. Ed. 2d 1, should be followed. Walgren v. Howes, 1 Cir. 1973, 482 F.2d 95, 99. Our first inquiry is whether the burden imposed by the election schedule was "so severe as itself to constitute an unconstitutionally onerous burden." 410 U.S. at 760, 93 S. Ct. at 1251; Walgren v. Howes, *supra,* 482 F.2d, at 100. A brief review of the burdens which have been upheld by the Supreme Court against equal protection challenges clearly shows that the plaintiffs' claim of disenfranchisement here is not nearly of the order of those that have been struck down by the Supreme Court. It is less, even, than some that have been sustained. In Rosario v. Rockefeller itself the Court sustained a requirement that voters register eight months before a presidential primary and eleven months before a nonpresidential primary to vote in that primary. The rationale for this requirement was the prevention of "raiding" by one political party in the primary election of another party. The Court found this a sufficient legitimate purpose without quarreling with the Second Circuit's conclusion that raiding was not a particularly realistic concern. 458 F.2d 649 at 653.

Cases which have invalidated burdens on voting have usually involved a total denial of the vote to a particular class by law or in fact.*Rosario, supra* 410 U.S. at 756, 93 S. Ct. 1245. See, e. g., O'Brien v. Skinner, 414 U.S. 524, 94 S. Ct. 740, 38 L. Ed. 2d 702 (1974); Bullock v. Carter, 1972, 405 U.S. 134, 143, 92 S. Ct. 849, 31 L. Ed. 2d 92. Williams v. Rhodes, 1968, 393 U.S. 23, 25, 89 S. Ct. 5, 21 L. Ed. 2d 24; Carrington v. Rash, 1964, 380 U.S. 89, 94, 85 S. Ct. 775, 13 L. Ed. 2d 675. In only one case has the Court invalidated a restriction viewed as nonabsolute: in Kusper v. Pontikes, 414 U.S. 51, 94 S. Ct. 303, 38 L. Ed. 2d 260 (1973), plaintiffs challenged an Illinois statute which prohibited any person from voting in the primary of one political party if that voter had cast a ballot in the primary election of another political party within the preceding ***632** 23 months. This statute was struck down by the Supreme Court, but principally because it constituted a substantial restriction on political party affiliation.

In the instant case the burden on student voting not only fell short of the quantum which the Supreme Court has forbidden but also of the allegations of plaintiffs that they were "deprived of the opportunity to visit personally the polls", upon which the Court of Appeals relied. Walgren v. Howes, *supra,* 482 F.2d, at 99. Students were not required to vote by absentee ballot. They could have remained on campus for independent study or other legitimate purposes, including participation in a political campaign. Had they wished to be away for most of the month of January, they would have been permitted to return for one or two nights in order to visit the polls personally. Being a state university,

the University of Massachusetts draws a large majority of its students from within the Commonwealth. According to defense counsel's representation, registered voters living in University dormitories included less than 10% whose home addresses were outside Massachusetts. The exhibit containing this information also showed large numbers of students coming from cities and towns within an hour's automobile ride of Amherst. Probably many of such students could have voted in person had they wished, without much expense or inconvenience. Students using absentee ballots encountered no more difficulty than other voters in Amherst or in other Massachusetts communities. They were readily available either by mail or, until the very day before the voting, at the office of the Town Clerk. Students were in no more burdened a situation than the serviceman away on military duty, the businessman away on a business trip or the shut-in confined to his home on account of illness.

The next question to be answered is whether the election calendar was "arbitrary . . . unconnected to any important state goal." Walgren v. Howes, *supra,* at 100. The answer is negative. Theoretically the defendants could have scheduled the local election anytime during the year without violating state law. Practically, it is highly desirable to schedule the town meeting as early as possible during the fiscal year consistently with members having before them the financial history of the previous year. Throughout the Commonwealth town meeting time in communities whose fiscal year starts on January 1 usually coincides with the appearance of the crocuses. Another important governmental goal of the selectmen in this case was maximization of attendance at the town meeting, several of whose members had, in reliance upon the customary date of the second Monday in March, made plans to be away on the date proposed by Mr. Walgren. A third proper consideration was minimization of voter and candidate confusion. The original election dates and filing deadlines were announced in early December. Then, just before the December 19 meeting, the town manager Torrey released a second set of dates, the so-called "Dakin" dates proposed by Attorney Dakin, on the erroneous assumption that they would be approved by the selectmen. When the meeting convened at 6:00 P. M. on December 19, the defendants believed that the deadline for publication of notice was only hours away. When it developed that the "Walgren" dates were thought by counsel to be illegal and that the "Dakin" dates conflicted with the governmental goals heretofore described, the selectmen were faced with the alternative of endeavoring to agree upon a third set of dates, thereby compounding rampant confusion and perhaps subjecting themselves to ridicule, or reinstating the dates initially publicized. They chose the latter course. In our opinion it was not arbitrary.

Plaintiffs' alternative theory attacking the 1973 calendar is that it violated the Twenty-sixth Amendment, a theory discussed by the Court of Appeals in Walgren v. Howes, *supra,* on the basis of plaintiffs' allegations, some of which ***633** were not established at the trial. Noting that the young voters' franchise under the Twenty-sixth Amendment was analogous to the black franchise under the Fifteenth, the Court of Appeals suggested that we pursue an analysis similar to that used under the Fifteenth. The court's opinion described the dual purpose of the Twenty-sixth Amendment of eliminating the "administrative nightmare" of separate voter lists for national and local elections and bringing 18, 19 and 20-year-old persons into the political process. Walgren v. Howes, *supra,* at 100-

101. The court, however. also pointed out that decisional analysis under the Fifteenth Amendment has been neither consistent nor explicit, compare Lane v. Wilson, 1939, 307 U.S. 268, 59 S. Ct. 872, 83 L. Ed. 1281, with Hadnott v. Amos, 1969, 394 U.S. 358, 89 S. Ct. 1101, 22 L. Ed. 2d 336, and Lassiter v. Northampton County Board of Elections, 1959, 360 U.S. 45, 79 S. Ct. 985, 3 L. Ed. 2d 1072, and stated its preference to leave resolution of plaintiffs' claim, in the first instance, to the district court. Subject to these qualifications, the Court of Appeals stated the following standard, ". . . if a condition, not insignificant, disproportionately affects the voting rights of citizens specially protected by a constitutional amendment, the burden must shift to the governmental unit to show how the statutory scheme effectuates, in the least drastic way, some compelling governmental objective." Walgren v. Howes, *supra,* 482 F.2d, at 102.

Before applying the test proposed by the Court of Appeals, we accept its invitation to set forth some thoughts of our own. Whether the Twenty-sixth Amendment should be construed as imposing constitutional prohibitions analogous to those surrounding racial restrictions under the Fourteenth and Fifteenth Amendments is not an easy question. Moreover there are differences between obstructing access to the political process and the placing of burdens on the exercise of voting rights. The students in the town of Amherst were not denied access to the political process within the town. Obviously a gross burden on the exercise of the franchise could have as preclusive an effect as a bar to participation in the franchise. But that is clearly not the nature of the burden in this case.

The vast majority of seniors at any four-year college and virtually all graduate students (at the University of Massachusetts approximately 6,000) are age twenty-one or over. If an election date coincides with a school recess so as to place burdens on student voters in the exercise of the franchise, those burdens fall equally on all students (as well as on faculty and staff who plan to be away during the recess). If a student who is eighteen can claim greater freedom from those burdens than a student who is twenty-one, only the fortuitous accident of birth supports any difference in treatment. Thus while students may make up a substantial portion of the class of eighteen to twenty-year old voters, when all students are similarly disadvantaged it is questionable whether one portion of those students should be treated differently than another portion. Granted, college students as distinguished from other beneficiaries of the Twenty-sixth Amendment had a major impact on its enactment and ratification; but can that impact or any other consideration justify one student being treated differently than another? The class of voters burdened by the election calendar shares but one common trait their association with the schools in question. It would seem that this burden presents the classical equal protection problem vis-a-vis other residents of the town and would be most appropriately decided under that provision of the Fourteenth Amendment. Cf. Carrington v. Rash, 1965, 380 U.S. 89, 85 S. Ct. 775, 13 L. Ed. 2d 675 (invalidation of voting discrimination against servicemen stationed in Texas).

Furthermore, we view the protection afforded students under the Twenty-sixth Amendment as fundamentally ***634** different than the protection afforded under the Thirteenth, Fourteenth and

Fifteenth Amendments. The Civil War Amendments have become powerful weapons for the vindication of civil rights in our courts. That protection is most pervasive when the treatment of citizens is discrimination on the basis of race or other "invidious" classifications. See, e. g., Loving v. Virginia, 1967, 388 U.S. 1, 87 S. Ct. 1817, 18 L. Ed. 2d 1010; Harper v. Virginia Board of Elections, 1966, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169. The nature of the judgments represented by the Civil War Amendments and the Twenty-sixth Amendment are fundamentally different. The decision that a man should not be discriminated against because he is black[7] rests upon a far more fundamental value perception than the decision to bring 18, 19 and 20-year-olds within the political process. This type of value perception accounts for the heightened judicial protection afforded when racial discrimination or a total abridgement of the right to vote is at issue. Regardless of how sympathetic one is to the extension of the vote to young people, the nature of the decision involved is simply not of the same kind. Moreover the extension of the ballot to young people does not have a historical background such as slavery, nor does it rectify a wrong which was as inconsistent with our constitutional scheme as the total denial of the vote of an otherwise qualified citizen on account of his race or poverty. See Gibbons v. Ogden, 1824, 22 U.S. (9 Wheat.) 1, 94, 6 L. Ed. 23; see generally V. O. Key, Jr., Southern Politics (1949). For these reasons we have difficulty in conceiving that a burden on the exercise of the ballot would be invalid under the Twenty-sixth Amendment when it would not be similarly invalid under the Fourteenth.

The Twenty-sixth Amendment did not correct a wrong of the order of those remedied by the Civil War Amendments or by the Nineteenth Amendment, which enfranchised women. The latter amendment was also referred to in the *Walgren* opinion, 482 F.2d, at 101. While the treatment of women in denying them the ballot was not hateful as was the treatment of blacks, it was similarly unenlightened and often degrading. The Twenty-sixth Amendment was less a recognition of basic human rights than of a change in the condition of young Americans who generally were marrying earlier, travelling more widely and taking a greater interest in government than ever before. In one sense it was an official acknowledgement of the new maturity, sophistication and responsibility of the T.V. generation.

Turning to the issues framed by the Court of Appeals, viz., (a) whether the inconvenience to students deciding to be away from Amherst during January 1973 of either using the absentee ballot or returning to vote amounted to a not insignificant burden on their right to vote, and (b) whether any such burden disproportionately affected the voting rights of young voters 18-20 years old, our description *ante* of the nature of the plaintiffs' inconvenience and defendants' countervailing goals is equally applicable here. The crucial consideration now seems to be the difference between an "onerous burden", under Rosario v. Rockefeller, *supra,* 410 U.S., at 760, 93 S. Ct. 1245, and Jenness v. Fortson, 1971, 403 U.S. 431, 91 S. Ct. 1970, 29 L. Ed. 2d 554, and a "not insignificant" one. This question should not be decided in the abstract but in the factual context presented. In the light of pronouncements by the Supreme Court under the Fifteenth Amendment, e. g., Hadnott v. Amos, *supra,* and Lassiter v. Northampton County Board of Elections, *supra,*we believe that the burdens here at issue were insignificant in a constitutional sense.

***635** If the burdens in question were not insignificant, the next question would be whether such burdens disproportionately affected the voting rights of young voters in Amherst 18-20 years of age. This inquiry would involve speculation as to the groups to be compared. There was no evidence of the size of various groups within the 18-20 age group who may not have been similarly burdened: the number of 18-20 year old residents of Amherst who were registered to vote but lived elsewhere than in the University dormitories, University student voters under age 21 and living off campus, young voters at Amherst College and Hampshire College, and young people registered to vote in Amherst attending high school, out-of-town colleges or no school at all, such as youths obtaining employment immediately on graduation from high school. An estimate by way of speculation would be the only basis for a determination of the number of voters over age 20 burdened to the same extent as the subclass of approximately 1,000 student voters residing in the University dormitories who were burdened. Adults in this category would include faculty and staff out of town during January and local adult residents away from their homes for reasons of business, military service, health and perhaps pleasure. We do know that the presumably burdened class of approximately 1,000 young voters comprised slightly less than 10% of the total electorate of 11,400. Whether this circumstance is relevant, or the circumstance of less than 20% of the eligible voters in Amherst having voted in the caucus of January 19, or the very small percentage of University dormitory students voting in the caucus and subsequent general election, we are not sure.[8] We do believe, however, that the ascertainment of relevant ratios and proportions as to relative burden is too conjectural to support plaintiffs' claim, especially in view of the doubts we have expressed as to the significance of the burdens at issue, i. e., the first of the two-pronged test formulated by the Court of Appeals. It is well settled that resolution of constitutional issues should not be undertaken on the basis of speculation. O'Shea v. Littleton, 414 U.S. 488, 94 S. Ct. 669, 38 L. Ed. 2d 674 (1974). We believe that the instant case is similar to San Antonio v. Rodriguez, 1973, 411 U.S. 1, 19, 93 S. Ct. 1278, 36 L. Ed. 2d 16, in that the "threshold considerations of analysis" are missing.[9] Therefore we conclude that plaintiffs have also failed to support the second phase of their argument based upon the Twenty-sixth Amendment.

Plaintiffs' second cause of action asserts that the notice of the election given by the Town of Amherst was constitutionally deficient under the due process clause of the Fourteenth Amendment. We are aware of no cases which require notice of elections as a matter of constitutional law. There are state cases dealing with the failure of officials to comply strictly with statutory requirements for election notices. Nonetheless, in view of the importance of the right to vote, it would be inconceivable that the Constitution would not require reasonable notice. Certainly in a democracy a loss of the opportunity to vote because of lack of notice would be the loss of an important liberty "preservative of other basic civil and political rights." Reynolds v. Sims, 1964, 377 U.S. 533, 562, 84 S. Ct. 1362, 1381, 12 L. Ed. 2d 506; Yick Wo v. Hopkins, *supra,* 118 U.S., at 370, 6 S. Ct. 1064. We therefore assume ***636** that the Constitution requires that reasonable notice of elections be given. The right to vote is at least as important as other rights where notice has been required prior to governmental action significantly

affecting those rights. See, e. g., Fuentes v. Shevin, 1972, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556; Goldberg v. Kelly, 1970, 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287; Sniadach v. Family Finance Corp., 1969, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349. But on the facts here presented we cannot conclude that the notices which were posted and published were constitutionally insufficient.

Plaintiffs did not show that the dates, times and polling places for the election were not generally known by the residents of Amherst, including student voters. Students were able to locate the voting booths in November 1972 when nearly 90% of the voters living in University dormitories cast ballots in the presidential election; and there was no indication that the location of the polls was changed in the interim. or notice provided in any different manner. If they lacked that knowledge it was readily available without requiring a major effort or expense. There was no effort to hide the fact that there would be an election, nor was it likely that the notice provided failed to give voters actual notice. Unlike a lawsuit where service in hand or by mail may be necessary to give reasonable notice, elections generate publicity and public awareness, and did so in this case. We conclude that the notice given by the defendants was reasonable.

In both causes of action, plaintiffs' contentions on the facts proved would require a major shift in constitutional duties from negatives to affirmatives. Thus the plaintiffs assert a governmental duty to set election dates so as to maximize voter participation and a similar duty as to notice of elections. While as a principle these goals can hardly be deprecated, they have not yet been raised to the constitutional level. Analogously, state legislative bodies are not required by the Constitution to search out and remedy all conditions which might be thought to be capable of improvement. "It is no requirement of equal protection that all evils of the same genus be eradicated or none at all." Railway Express Agency v. New York, 1949, 336 U.S. 106, 110, 69 S. Ct. 463, 466, 93 L. Ed. 533. Cf. North Dakota State Board of Pharmacy v. Snyder's Drug Stores, 414 U.S. 156, 94 S. Ct. 407, 38 L. Ed. 2d 379 (1973). Here the question was the participation of recently enfranchised students. The selectmen conducted several student voter registration drives. They attempted to modify the election calendar for 1973 to facilitate student voting, but mainly because of the late date at which that modification was urged upon them, they were unable to surmount the problems which a change in the calendar would have entailed. They have now, however, by their adoption of the 1974 election calendar and their resolution of January 17, 1974, carried out their intent to modify the election calendar to facilitate student voting.

At the close of the trial it became obvious that there were no members of the class of students allegedly injured who were named as plaintiffs in this suit. Plaintiff Sherman remained on campus in a University dormitory during January. He therefore cannot claim that the selectmen's choice of an election date injured him in any way. Plaintiff Glusco apparently abandoned participation in the suit. Moreover, her residence was not in a school facility and therefore whether or not the University was in session would not affect her participation in the January election. Finally, since she did not live in

University housing it is doubtful whether she was under 21; if not, she could not represent the class of students allegedly harmed. But for the presence of plaintiff Walgren there would be no doubt that we would have to dismiss the complaint for lack of a named class member. O'Shea v. Littleton, *supra*; Indiana Employment Division v. Burney, 1973, 409 ***637** U.S. 540, 93 S. Ct. 883, 35 L. Ed. 2d 62; Bailey v. Patterson, 1962, 369 U.S. 31, 32-33, 82 S. Ct. 549, 7 L. Ed. 2d 512. Because of our view on the merits, however, we need not decide the question of plaintiff Walgren's standing[10] to raise the rights of student voters under 21 years of age.

It is ordered that judgment be entered for the defendants.

NOTES

[1] The Twenty-sixth Amendment was ratified on July 5, 1971 and provides, "The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age." Plaintiff Walgren also claimed a violation of his First Amendment rights, but did not adduce a scintilla of evidence in support of it at the trial; and we shall not discuss that claim further.

[2] The legal opinions under which the selectmen were operating may have been erroneous; however, at no relevant time were the selectmen aware of this.

[3] A few states, e. g., New York, make no provision for voting by absentee ballot in primary elections.

[4] The only evidence as to these categories came from the president of the student body, Apostola, who estimated that 60% of occupants of private apartments remained in January.

[5] It is too late to urge that motive or intent cannot be the foundation for a finding of unconstitutionality. Keyes v. School District No. 1, 1973, 413 U.S. 189, 201, 205, 208, 209, 93 S. Ct. 2686, 37 L. Ed. 2d 548.

[6] Theoretically plaintiffs also argued that the calendar deprived them of the opportunity to participate in pre-election campaigning and education. As a practical matter, however, considering that the vast majority of students would be away during the traditional holiday break between Christmas and New Year's Day and the dates proposed by Mr. Walgren would have added only a few days for pre-election activities, this aspect of plaintiffs' claim is *de minimis.* Moreover, plaintiffs offered virtually no evidence at the trial of any pre-election activity.

[7] While it is difficult to characterize this decision as anything other than a moral one, the human debasement involved in racial discrimination is obvious. See Karst, Invidious Discrimination: Justice Douglas and the Return of the Natural Law-Due Process Formula, 16 U.C.L.A.L.Rev. 716 (1969).

[8] E. g. the question of a disproportionate burden on student voters may have become academic in February 1973 when only 142 students out of 1,587 registered voters in the University domitories voted in the general election which was held when the University was in full operation. We wonder how one can burden a person's participation in conduct in which he is not participating.

[9] The Court's opinion in the *San Antonio* case, 411 U.S., at 28, 93 S. Ct. 1278, is also relevant to our reliance *ante* on the difference in the historical backgrounds between the Fifteenth and Nineteenth Amendments on the one hand and the Twenty-sixth on the other.

[10] If all 142 students who were shown to have voted in the final town election, held when all students were in town, had voted for Mr. Walgren in the caucus, he would have still not qualified to run in the final election (Walgren trailed Schuerer in the caucus by 196 votes). Thus it is questionable whether Mr. Walgren could establish the *bona fide* injury in fact which is necessary to raise the rights of the students under Sierra Club v. Morton, 1972, 405 U.S. 727, 92 S. Ct. 1361, 31 L. Ed. 2d 636, and Eisenstadt v. Baird, 1972, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349.

1973 ruling:

http://nh.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19730718_0040061.C01.htm/qx

Walgren v. Howes

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

decided: July 18, 1973.

ERIC WALGREN, ET AL., PLAINTIFFS, APPELLANTS,
v.
MERLE HOWES, ET AL., DEFENDANTS, APPELLEES

Appeal from the United States District Court for the District of Massachusetts.

Coffin, Chief Judge, McEntee and Campbell, Circuit Judges.

Author: Coffin

COFFIN, Chief Judge.

Appellants Walgren, Glusco and Sherman,[*fn1] proceeding in forma pauperis and pro se, appeal from an order of the district court dismissing their complaint against appellees, the members of the Board of Selectmen of the Town of Amherst, for alleged violation of, principally, the First, Fourteenth, and Twenty-Sixth Amendments to the United States Constitution in scheduling a special caucus for town elections on January 19, 1973 when the University of Massachusetts was in the midst of a semester recess.[*fn2] We vacate the order of the district court and remand for further consideration in accordance with this opinion.

All three appellants claimed to be resident voters of the Town of Amherst, 51 M.G.L.A. ch. 51, § 1. Walgren was a candidate for the office of selectman. Sherman is a full-time undergraduate student at the University, residing in one of its dormitories. They were concerned that the Board of Selectmen, as it had done since 1939, had set the annual

town election for the third week in February. In accordance with state law,[*fn3] a "special caucus" in the nature of a non-partisan primary election would be necessary in the event that more than twice as many candidates as the number to be elected for an office might file nomination papers, and such caucus would have to be held at least 31 days, before the town election. Appellants realized that any such special caucus would take place in mid-January when, as alleged in Sherman's affidavit, "most students who reside on campus during the academic year are required by university policy to vacate their residences and therefore do so." In that event, it was claimed, a large number of young persons enfranchised by the Twenty-Sixth Amendment would be discouraged from voting since they would have to use the cumbersome and less meaningful method of voting by absentee ballots.

Appellant Walgren, concerned about the youth and student vote, arranged to appear at a Board meeting on December 11, at which time he endeavored to persuade the Board to rearrange the election schedule to encourage maximum voting in the college community. The Board agreed to do so if it was legally permissible,[*fn4] and upon advice of counsel adopted at its December 18 meeting a new election schedule providing for the special caucus to be held on January 29, after the University would have commenced its second semester. Between December 11 and December 18, appellants alleged, the Board received numerous telephone calls from older town residents who objected to plans to accommodate student voters. There being some confusion whether the dates proposed by counsel were in accordance with state law, the Board met and voted on December 19 to adhere to its initial plans to hold the special caucus during the semester recess, simultaneously rejecting another plan prepared by its counsel attempting to eradicate all doubts as to compliance with state law.[*fn5]

Thereupon appellants filed this suit, contending that the Board action in returning to the initial election schedule, violated the First, Fourteenth and Twenty-Sixth Amendments to the United States Constitution; that it "willfully discourages and prevents full participation in the electoral process by an entire constituency of voters -- some 30 per cent of the registered voters of the Town of Amherst";[*fn6] that the action was arbitrary, discriminatory, and had the purpose to disenfranchise the new student vote in the local elections of Amherst, and to prevent the election of [Walgren] and others, who might represent the interests of young people . . . ." They sought to maintain the suit as a class action.

On January 17 the district court denied temporary relief and the special caucus took place as planned.[*fn7] Subsequently appellees replied with a motion to dismiss the suit under F.R. Civ. P. 12 for lack of subject matter jurisdiction, and failure to state a claim upon which relief could be granted, and alternatively, moved for summary judgment. They also claimed that the suit was not properly maintainable as a class action.[*fn8] Affidavits from various officials at the affected educational institutions were filed. A few weeks later, the court not having ruled on these motions, appellees filed an answer to the complaint which is most easily summarized by stating that it denied virtually all of appellants' allegations. A hearing was held the day the answer was filed, though the record does not contain a transcript or a summary of testimony. Some days later the district court issued its order, granting appellees' motions for summary judgment and dismissal for failure to state a claim.

We first note that the district court should not have granted a summary judgment. F.R. Civ. P. 56 may be utilized only when there is "no genuine issue as to any material fact". Here almost all of the factual claims of appellants were denied by appellees in their answer. Moreover, the affidavits did little to dissolve that real factual controversy. For example, at least one important issue in the case -- whether the residence halls at the University were generally closed to students during the semester break so that for this or perhaps another reason a large number of students left town during that period -- could not be resolved without an evidentiary hearing. "Summary judgment is not a substitute for the trial of disputed factual issues." 10 Wright & Miller, Federal Practice & Procedure: Civil § 2712 at 379 (1971); cf. Briggs v. Kerrigan, 431 F.2d 967 (1st Cir. 1970). See Sartor v. Arkansas Natural Gas Corp., 321 U.S. 620, 627, 88 L. Ed. 967, 64 S. Ct. 724 (1944).

That the court improperly granted summary judgment does not end our inquiry, for the court also dismissed the suit for failure to state a claim. F.R.Civ.P. 12(b)(6). A remand, therefore, without addressing appellants' legal arguments in some respect would be less than helpful. We cannot emphasize enough the rule that a court should not dismiss a complaint under 12(b)(6) "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957); Ballou v. General Electric Corp., 393 F.2d 398 (1st Cir. 1968). For the reasons hereinafter enunciated, we believe that appellants have presented legal issues which can be resolved only after a trial on the merits.[*fn9]

We first address appellants' equal protection claim under the Fourteenth Amendment. The appellants argue that the town law setting the election date interferes with the equal exercise of the franchise right -- i.e., one large, identifiable class is said to have been deprived of the opportunity to visit personally the polls and must utilize instead the allegedly more cumbersome and less effective method of voting by absentee ballot. They add that the right to participate in elections on an equal basis with other citizens has been denominated a fundamental right, Harper v. Virginia Board of Elections,383 U.S. 663, 16 L. Ed. 2d 169, 86 S. Ct. 1079 (1966); see also San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16, 41 U.S.L.W. 4407, 4417 n. 74, 78 (1973).

They conclude therefore that any infringement of that right must be scrutinized under the compelling interest test. Harper, supra ; Carrington v. Rash, 380 U.S. 89, 13 L. Ed. 2d 675, 85 S. Ct. 775 (1965); Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969); Cipriano v. City of Houma, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969); Evans v. Cornman, 398 U.S. 419, 26 L. Ed. 2d 370, 90 S. Ct. 1752 (1970); City of Phoenix v. Kolodziejski, 399 U.S. 204, 26 L. Ed. 2d 523, 90 S. Ct. 1990 (1970); Dunn v. Blumstein, 405 U.S. 330, 31 L. Ed. 2d 274, 92 S. Ct. 995 (1972).

We do not view the compelling interest test as applicable here. There being no allegation that the town has improperly denied absentee ballots to residents requesting them, it has not "totally denied the electoral franchise to a particular class of residents [such that] there [might be] no way in which the members of that class could [make] themselves eligible to vote." Rosario v. Rockefeller, 410 U.S. 752, 93 S. Ct. 1245, 36 L. Ed. 2d 1, 41 U.S.L.W. 4401, 4403 (1973).[*fn10] We believe that the instant case, if considered simply as one in which a large, identifiable class is burdened by the choice of a particular election date, must track the analysis in Rosario, rather than apply the more rigorous compelling interest standard.

The Court engaged in three inquiries. It first considered whether the time limitation before it was "so severe as itself to constitute an unconstitutionally onerous burden" on the exercise of the franchise and freedom of political association. It then asked whether it was "an arbitrary time limit unconnected to any important state goal" which must, of course, be "a legitimate and valid state goal". Id. 93 S. Ct. at 4403-4404. Finally, the Court noted that there were no less drastic (and feasible) means to effectuate the state's goal. Id. 93 S. Ct. at 4404 n. 10.

The district court must therefore attempt to assess the nature and weight of the burdens inherent in absentee voting -- the separate application, the taking of an oath, and execution of an affidavit, payment of the postage and notary fees, M.G.L.A. ch. 51, § 86 et seq., cf. Bishop v. Lomenzo, 350 F. Supp. 576, 583-584 (E.D. N.Y. 1972), the risk of delay, etc. The judicial inquiry should be focused on the extent of other obstacles, not merely technical, to casting an effective and informed vote. The state goals involved would seem to include the minimizing of fraud, accidental error, disruption of ongoing public and private activities, delay in determining outcome, voter confusion, and the maximizing of voter participation and appraisal of candidates and issues. The connection of the election date to these goals can be answered only by factual inquiries. Lastly, where an election date is set by a town vested with absolute discretion, and the chosen date is found to bear demonstrably on a large and identifiable class of voters, to their disadvantage, the court should explore the feasibility of other dates which have a lesser adverse impact on these voters.

While appellants may be able to meet the burdens of proof imposed upon them under Rosario, supra, their task is not easy. They argue, however, that the town must justify its choice of the election date because there has been an abridgement of the right to vote on account of age in violation of the Twenty-Sixth Amendment. Testing the action of the town under this amendment poses new problems of analysis. Few cases have been decided under it and none pose a fact situation similar to the instant one. Our guidance at this stage of the proceedings is necessarily limited. Perhaps most clear is the purpose of the amendment in the light of its history. In addition to avoiding what would have been an administrative nightmare brought upon by the decision in Oregon v. Mitchell, 400 U.S. 112, 27 L. Ed. 2d 272, 91 S. Ct. 260 (1970),[*fn11] the backers of the amendment argued that, young persons between 18 and 21 being otherwise treated as adults for purposes of civil and criminal responsibility and military service, it was anomalous to deny them the franchise right; and that the frustration of politically unemancipated young persons, which had manifested itself in serious mass disturbances, occurring for the most part on college campuses,[*fn12] would be alleviated and energies channeled constructively through the exercise of the right to vote. It is this latter goal, seeking to substitute the ballot for the bullet, with which we are concerned. Thus, while the Twenty-Sixth Amendment speaks only to age discrimination, it has, as noted by Senators Percy and Brooke, among many other legislators, particular relevance for the college youth who comprise approximately 50 per cent of all who were enfranchised by this amendment. 117 Cong. Rec. 5817, 5825.

While both the Fifteenth and Nineteenth Amendments served as models for the Twenty-Sixth,[*fn13] more case law has developed under the Fifteenth. Most relevant would seem to be the general admonitory teaching of Lane v. Wilson, 307 U.S. 268, 83 L. Ed. 1281, 59 S. Ct. 872 (1939). Justice Frankfurter, addressing the question whether the Fifteenth Amendment was violated by a state statute which, though neutral on its face, had the effect of enfranchising all white voters through a grandfather clause, while requiring black would -be voters to register within a twelve day period or forever lose the franchise right, wrote as follows:

"The [Fifteenth] amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race." Lane, supra at 275.[*fn14]

At other times, the Supreme Court has been even less explicit in its analysis under the Fifteenth Amendment. See, e.g., Hadnott v. Amos, 394 U.S. 358, 364, 22 L. Ed. 2d 336, 89 S. Ct. 1101 (1969); Lassiter v. Northampton County

Board of Elections, 360 U.S. 45, 50-54, 3 L. Ed. 2d 1072, 79 S. Ct. 985 (1959). No clear test has yet emerged to help determine when a statute, which has the effect of placing an unequal burden on a class protected by a voting amendment, may be justified by some compelling governmental objective unobtainable by any less drastic means; or when the burden is so selective and egregious on its face as to constitute an "abridgement" per se.

In this case, a town, given discretion under state law to hold its elections almost anytime, has exercised that discretion with the effect of imposing additional procedural requirements and other disadvantages, inherent in the absentee voting process, on what is alleged to be a large group of young voters, said to be some thirty per cent of those eligible to vote in the town election. A violation of the Twenty-Sixth Amendment is said to have occurred. The parties have not adequately argued this point before us and we prefer to leave its resolution, in the first instance, to the district court. Without attempting to define the boundaries of "abridgement", we deem it sufficient to state, for now, that it seems only sensible that if a condition, not insignificant, disproportionately affects the voting rights of citizens specially protected by a constitutional amendment,[*fn15] the burden must shift to the governmental unit to show how the statutory scheme effectuates, in the least drastic way, some compelling governmental objective. In other words, the voting amendments would seem to have made the specially protected groups, at least for voting-related purposes, akin to a "suspect class", to use the contemporary label. Of course, if the court were to find the burden of such a significant nature as to constitute an "abridgement", it presumably would not take the additional step of considering the adequacy of governmental justification.

The passage of a constitutional amendment does not take place lightly. It creates serious problems of accommodation as the Fifteenth Amendment demonstrated. The specific problem faced by college communities with concentrated youth populations was faced in the consideration of the Twenty-Sixth Amendment. To the expressed fears of campus takeovers of small communities -- since "the student body [is] composed largely of 18 to 21-year-old" -- the candid response in debate was that if students "satisfy the residency requirement of that town obviously they would be entitled to vote." 117 Cong. Rec. 7538-39, 7547. This is the same answer that the Court gave to the same concern in Carrington, supra 380 U.S. at 94: "'Fencing out' from the franchise a sector of the population because of the way they may vote is constitutionally impermissible." See also Dunn, supra 405 U.S. at 356 n. 28.

As Congressman Randall said, "It is quite possible that there may be other laws governing non-Federal elections in the various states which will have to be changed to prevent conflict with the proposed intent of this amendment." 117 Cong. Rec. 7565. The determination whether there is an impermissible conflict with one or more of the goals of this amendment will, should the court reach this issue, admittedly call for sensitive analysis. We cannot say whether or not the election date set by Amherst will prove to be one of the non-federal decisions which are vulnerable under the new amendment. Enough has been said to indicate that this case, appearing no doubt to some as an unnecessary irritant in municipal life, encompasses questions both broad and deep.

Judgment vacated; case remanded for further proceedings consistent with this opinion.

An analysis (attached) concludes, pg 129, Missouri Law Review Volume 40, Issue 1 Winter 1975 Article 15:

http://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=2246&context=mlr

However, if a so-called

college town is involved, the twenty-sixth amendment may

require that the municipality not schedule elections during a recess

in the school year if the following factors are met: 1) college students

constitute a substantial portion of the eligible voters in the town;

2) the setting of the election date during a school vacation period

would disproportionately burden the voting.rights of the college-age

voters; 3) the date on which the election is to be held is within the

discretion of the city; and 4) there are reasonable alternative dates

for the election. If these factors are present, any election held during

a time when students are required to vacate their residences should

be closely scrutinized to determine if a compelling state interest

exists for holding the election on such a date.

And a tribute to alum Walgren at Amherst College:

https://www.amherst.edu/aboutamherst/magazine/in_memory/1962/elwalgren

From The Olio

Unfortunately Eric does not have an Olio photo, either in 1962 or 1965. (After recovering from his skiing accident, he graduated in 1965.)

Eric Walgren '62, died August 23, 1998
(view alumni profile - Log-in required)

In Memory

We have suffered the loss of another fine classmate, Eric Walgren. This sad news came in the form of an obituary notice in the *Hampshire Gazette* reporting that Eric died of cancer in Amherst on August 23,1998. His surviving family includes his mother, Margaret Walgren, his son, Sean, his daughter, Erin, and his brother, Doug. We want his family to know how much Eric was loved and admired by the Amherst Class of 1962. As the obituary pointed out, Eric was a lawyer, political activist, artist, poet, and farmer, living most of his adult life in the greater Amherst area. There will never be another like him.

It was a mere forty years ago that we gathered as a Class in Amherst, not knowing what to expect or what our classmates would be like. Eric was an instant campus celebrity, known for his fiery, independent spirit, wide-ranging intelligence, infectious good humor, and sometimes unusual activities. Rice Leach, Eric's dear friend and roommate, provides more detailed recollections below.

Those of us on third-floor Morrow fell immediately under Eric's kindly, eclectic spell. At one point during the first semester, we helped Eric seek a simpler life by removing all the furniture from his room and laying down a sparse blanket of straw on the floor. This worked well for Eric, at least for a time; others of us who tried it had less satisfactory results. Morrow dwellers were in constant danger of being challenged to "belly rumbles" by Eric. This painful game consisted of standing toe-to-toe with Eric and punching each other in the stomach as hard and rapidly as possible until someone gave up; rarely was it Eric. The only way to win at this was to try to weaken Eric with laughter, then attack.

Eric attended our 25th Reunion, and while most of us had not seen him for many years, and he had taken a different road, everything seemed the same. The older, gentler Eric was every bit as engaging, affectionate, challenging, funny, and bright-eyed as the eighteen year old who joined us in 1958. At the Class dinner in Valentine, our 1962 questionnaire results were presented. One category involved political affiliations. It was reported that there were "x" Democrats, "y" Republicans and "z" Independents in the Class. At this point in the dinner, Eric rose, politely interrupted, and added that our Class also had "one Communist," then sat down. There was a strong, spontaneous round of applause. We will really miss him at future reunions.

—FRED L. WOODWORTH '62

Eric Lee Walgren came to Amherst from Mount Lebanon High School by way of the US Army where he had done six months active duty. Early in his freshman year he became well known as the guy who rappelled down the dorm wall to go to Valentine for breakfast. His reputation became forever engraved in the memories of those who saw a photograph labeled "The Nobel Savage" in the *Amherst Student* after the Wesleyan game in Middletown. It was Eric, a member of the freshman football team. He had taken part in an unsuccessful assault on their goal posts and was covered with mud, holding his shirt in one arm and gesturing to the defenders with the other. This loyalty to the cause and tendency to challenge authority stayed with him as long as I knew him. His nickname "Eric the Rat" developed on the third floor of Morrow dormitory. I cannot recall who named him, but I think it was Fred Woodworth. In any case, Eric liked it and it stuck. I had several classes with him including freshman English, which he really enjoyed, and a history seminar where he routinely distracted the instructor, Mr. Bisson, by sitting in the front row and drawing nudes on those maps we had to complete. Another truly memorable classroom performance was when he demonstrated how to prepare popcorn in our required public speaking class. As the popcorn was popping, he imitated Arnie Arons by developing a mathematical formula for the force of each pop. The last line of the formula indicated that there was always a bit of retained energy, which he clearly demonstrated by lifting the top off the skillet and letting that last pop scatter popcorn all over the room.

We were roommates at the beginning of our sophomore year. He got a chance to have a room in Valentine Hall and needed roommates, so Charlie Stender and I joined up. He was a serious student and a hard worker when the subject interested him. He was concerned about the well-being of his friends and was always willing to help them. He was interested in people and enjoyed challenging assumptions.

He dropped out of school following a skiing accident early in 1960 but stayed in Amherst. About that time, he purchased his lot in Belchertown for the grand sum of eight hundred dollars, bought an old barn, and moved the timbers and lumber to his lot where he designed and built his home. During this "sabbatical," he met and married Penny Dunbar, worked different jobs, was a regular at Psi U on Saturday nights, enjoyed skiing and motorcycling, and announced the birth of two children. A few years later, he returned to classes and graduated with the Class of '65, but his heart was clearly with the Class of '62.

We kept up with each other over the years, mostly by linking up at reunions or during visits to campus. Most of the time we talked about what had occurred during our time at Amherst and didn't go into much detail about

daily life. I have many fond memories of Eric. He was clearly a character, but he was also a very good friend for nearly forty years. He was the kind of friend you can run into after a ten-year absence and start right up where you left off. I will miss him.

-—RICE C. LEACH '62

Here also is some information from the February 10 2007 issue of the*Daily New Hampshire Gazette*------

> Eric Walgren was an Amherst College graduate, a lawyer, a carpenter, an organic farmer and an anti-war activist. His court challenge of Amherst's election calendar still influences the town's politics today.
>
> Known as "Eric the Rat", he was a leader of a student strike at the University of Massachusetts in 1970. That same year, he co-founded a branch of the Universal Life Church, which broke off in 1977 and was renamed the Nature Church,
>
> St. Cyr [Nature Church High Priest] said.
>
> He took his nickname himself because "his face was kind of rat-like and he used to scurry around," said the late Christopher Zentgraf, a former high priest of the church, after Walgren's death. He liked to scrounge like a rat, and built the building destroyed in last week's fire largely from discarded materials, St. Cyr said.
>
> He lived in the building, growing most of his own food, and raising pigs, chickens and goats, St. Cyr said. It was also used for ceremonies and potlucks by the Nature Church.
>
> In 1972, after losing a race for Amherst's Board of Selectmen, he challenged in court the board's decision to hold the election during UMass intercession, when many students were out of town.
>
> Although Federal Judge Arthur Garrity declined to overturn the election results, he said that in future elections the town should not put the special burden of absentee ballots on a certain class of voters. It is now accepted practice that Amherst elections don't take place when students are out of town.
>
> In 1998, Walgren was still making waves. He came to a protest dressed as Uncle Sam and carrying a tattered, upside-down American flag, "as a symbol of the cancer of empire in our government," according to the Amherst Student. He died later that year, of cancer.
>
> ---NICK GRABBE (Daily New Hampshire Gazette reporter)

Take Care,

Alisa